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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,031	06/06/2001	Linda Roskin	Roskin-1	7600

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/874,031

Applicant(s)

ROSKIN, LINDA

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5 and 7-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5 and 7-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Art Unit: 3643

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7, 9-15, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EPO 0182453 to Turner in view of U.S. Patent No. 4,901,881 to McElroy.

Regarding Claims 11, 13-15, 19, 21, and 22, Turner teaches floral articles and the step of inserting floral arrangement through the plurality of openings in a cover of a container that has apertures in the planar surface (Turner Fig. 1 and 3); a grid pattern of openings defined in the cover element having multiple rows and multiple columns, multiple openings arranged in each of the rows and each of the columns (Turner Fig. 2 #12). Turner is silent on the elastomeric cover. However, McElroy teaches a floral arrangement cover for a vase and method, the vase (Fig. 7 #30) having an open top; the cover has an elastic (Col. 3 line 35) planar top surface (Fig. 1 #12) in which are defined a plurality of openings (Fig. 2 #20); the cover has an elastic peripheral wall (Fig. 1 #14) that extends downwardly from the planar top surface, the elastic planar top and elastic peripheral wall being elastically stretchable to a stretched size (Fig. 8 #14) where the peripheral wall can receive the open top of the vase therein and the elastic planar

Art Unit: 3643

top spans the open top of the vase. Wherein the peripheral wall engages the vase around the open top by contracting around the open top.

It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention with the teachings of an elastomeric cover to accommodate different size container/vases as taught by McElroy (McElroy Col. 2 line 14-21, Col. 1 line 11, and Col.8 line 40) since the modification is merely the selection of a known alternate equivalent cover means.

Regarding Claims 5, Turner as modified teaches the plurality of openings are symmetrically disposed throughout the planar top surface (Turner Fig. 2 and McElroy Fig. 2 #20).

Regarding Claims 6 and 20, Turner as modified teaches the plurality of openings are arranged in linear rows and columns (Turner Fig. 2 and McElroy Fig. 2 #20).

Regarding Claim 7, Turner as modified inherently teaches the openings are slots that enlarge when the cover is stretched (McElroy Col. 3 line 35 and Col. 8 line 12).

Regarding Claims 9 and 17, Turner as modified teaches the cover element has a circular peripheral shape (McElroy Fig. 2).

Regarding Claims 10 and 18, Turner as modified teaches the cover element has a polygonal peripheral shape (McElroy Fig. 11).

Regarding Claim 12, Turner as modified teaches the cover element can cover containers of various sizes and shapes (McElroy Fig. 11), but is silent on explicitly teaching that the open top of the container is not symmetrical and the cover element conforms to the open top end of the container. However, Turner as modified inherently

teaches that the cover of McElroy would conform to the open top of a non-symmetrical container since the cover is elastomeric and deformable for any container as taught by McElroy (McElroy abstract second to last sentence).

Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EPO 0182453 to Turner as applied to claim 22 and 11 above, and further in view of U.S. Patent No. 2,876,587 to Saks et al.

Regarding Claims 8 and 16, Turner as modified by McElroy is silent on the cover element being translucent. However, Saks teaches a vase cover that is translucent (Saks Col. 2 line 13-14). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings since the modification is merely an aesthetic design choice selected to enhance the appearance of the assembly and for ease of monitoring the contents of container.

Response to Arguments

Applicant's arguments with respect to claims 5 and 7-22 have been considered but are moot in view of the new ground(s) of rejection.

The Turner patent is merely cited to teach a lid/cover with a grid pattern for a container. The McElroy patent is cited to teach that it is old and notoriously well-known to construct a lid/cover out of elastic material so that it can snugly fit/conform to many different size and shape containers. Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Turner with the teachings of McElroy since the modification is merely the

Art Unit: 3643

selection of a known material for the suggestion/motivation/success of having a lid that can fit on many different containers to accommodate different sizes of floral bequests.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Examiner maintains that rejection of Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EPO 0182453 to Turner as applied to claim 22 and 11 above, and further in view of U.S. Patent No. 2,876,587 to Saks et al. Applicant references page 10 of the Appeal Decision No. 2003-1855, but the discussion on this page does not pertain to the rejection stated in the above paragraphs and therefore is maintained. Modifying Turner to have a translucent appearance is merely and aesthetic design feature to blend with many surrounding environments to keep it neutral in appearance etc and does not present a patentably distinct limitation.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3643


§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

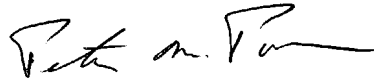
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Examiner
Art Unit 3643

19 May 2004


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600